IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION NOS :19114 & 19115 of 2006

-

-

Dated: 15th September 2006.

Between:

WRIT PETITION NO:19114 of 2006

M/s. Padmaja Agencies
H.No.1-7-241, Building No.110,
Sarojini Devi Road,
Secunderabad – 500 003.

..... PETITIONER

AND

Commercial Tax Officer,
Saronini Devi Road Circle,
Secunderabad and others.

.....RESPONDENTS

WRIT PETITION NO:19115 of 2006

M/s. Padmaja Agencies
H.No.1-7-241, Building No.110,
Sarojini Devi Road,
Secunderabad – 500 003.

..... PETITIONER

AND

Commercial Tax Officer,
Saronini Devi Road Circle,
Secunderabad and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE D.APPA RAO

W.P.NOs.19114 & 19115 OF 2006

ORAL COMMON ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

The petitioner in these two writ petitions is one and same, which is a partnership firm engaged in the business of providing internet access to its customers and is an assessee on the rolls of the 1st respondent. For the assessment years 2001-02 and 2002-03, the petitioner's assessments under the A.P.G.S.T. Act came to be made by the 1st respondent and came to the conclusion that there is no taxable turnover in the case of the petitioner for those assessment years, but however, the said assessment orders came to be revised by the 2nd respondent in exercise of the powers under Section 20(2) of the A.P.G.S.T. Act, and concluded that the petitioner is liable to pay tax at 8% of the turnover of the petitioner. Aggrieved by the same, the petitioner carried two appeals before the Sales Tax Appellate Tribunal. During the pendency of the appeals, the petitioner sought stay of recovery of the disputed tax, which is the subject

matter of appeal before the Tribunal. The said applications were rejected by the 3rd respondent by his orders dated 14th July 2006. Hence, the present writ petitions with respective prayers as follows.

> " For the reasons stated in the accompanying affidavit the petitioner herein prays that this Hon'ble Court may be pleased to issue a Writ or Order or direction particularly one in the nature of Writ of Mandamus granting stay of collection of the disputed tax of Rs.4,59,745/- for the assessmentyear 2001-02 (APGST) arising in pursuance of the stay rejection order of the third respondent dated 14.07.2006 passed in CCT's Ref.No.LIII(2)/352/2006-1 pending disposal of the appeal before the Sales Tax Appellate Tribunal or to pass such other or further orders as this Hon'ble Court deem fit and proper in the circumstances of the case."

> " For the reasons stated in the accompanying affidavit the petitioner herein prays that this Hon'ble Court may be pleased to issue a Writ or Order or direction particularly one in the nature of Writ of Mandamus granting stay of collection of the disputed tax of Rs.6,06,957/- for the assessment year 2002-03 (APGST) arising in pursuance of the stay rejection order of the third respondent dated 14.07.2006 passed in CCT's Ref.No.LIII(2)/352/2006-2 pending disposal of the appeal before the Sales Tax Appellate Tribunal or to pass such other or further orders as this Hon'ble Court deem fit and proper

in the circumstances of the case."

Heard the learned Government Pleader for Commercial Taxes.

In view of the judgment of the Supreme Court in BHARAT SANCHAR NIGAM LIMITED AND ANOTHER v. UNION OF INDIA AND OTHERS[1], that electro magnetic waves or radio frequencies are not goods for the purpose of Article 366 of the Constitution of India, it is highly doubtful that the petitioner is liable for tax under the A.P.G.S.T. Act. However, in view of the pendency of the appeal before the Tribunal, we do not wish to express any final opinion in these matters, but, in the circumstance, we deem it appropriate to direct the respondents not to take

any coercive steps for recovery of the tax due

from the petitioner, as determined by the

2nd respondent with reference to the abovementioned two assessment years, during the pendency of the appeals before the Sales Tax Appellate Tribunal.

Accordingly, with the above directions, both the writ petitions are disposed of at the stage of admission.

J.Chelameswar, J

D.Appa Rao, J

15th September 2006
mrk

---

[1] 145 STC 91